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May 13, 2008

AGENDA ITEM 3b

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION
COMMITTEE**

I. SUBJECT: Assembly Bill 2156 (Hernandez)—As Amended on
April 10, 2008

Special Death Benefits

II. PROGRAM: Legislation

III. RECOMMENDATION: Neutral

This bill would extend the special death benefit to an eligible survivor of a safety member who dies following an on-the-job injury as specified.

IV. ANALYSIS:

Currently, the law provides that a special death benefit is payable to the eligible survivor of a patrol, state peace officer/firefighter, state safety, state industrial, or local safety member whose death occurred in the line of duty. This bill would provide this same benefit to the eligible survivor if the member's death was the result of single event on-the-job injury that left the member in a persistent vegetative state devoid of cognitive function from the date of the injury until the time of death. The benefit would be retroactive to the effective date of the member's industrial disability retirement.

Background

There are several benefits available to members or their survivors when a member is injured or dies as a result of an industrial injury while employed in a safety classification.

The special death benefit is payable to the eligible survivor of a member who dies as a result of injury or disease in the course of, or resulting from, their employment. Eligible survivors include a spouse, domestic partner, and unmarried children or stepchildren under the age of 22. The special death

benefit is calculated as 50 percent of the member's final compensation. If the death was due to a violent act, and there are surviving children and a spouse or domestic partner, the benefit can be increased to 75 percent.

Under some circumstances, a member may be severely injured through violent means, but does not die immediately. In such a case, while the member is living, the member's family is not eligible for the special death benefit, but would be eligible to apply for industrial disability retirement on the incapacitated member's behalf. This benefit is also calculated as 50 percent of the member's final compensation, unless the member was eligible for a higher service retirement amount due to their age and years of service. If option 2 or 2W is elected at the time of application, the member's spouse will continue to receive this monthly amount for life as well.

Additionally, The Public Employees' Medical and Hospital Care Act (PEMHCA) provides continuing health benefit coverage to the uninsured¹ surviving spouse or other eligible family member(s) of a firefighter or peace officer who dies because of an injury or disease sustained in the line of duty. Upon the enrollment effective date of the member's survivors, the state pays the employer contribution for health benefit calculated at 100 percent of the weighted average of premiums, as specified in law.

Proposed Changes

This bill would provide that a special death benefit is payable to the eligible survivor of a patrol, state peace officer/firefighter, state safety, state industrial, or local safety member whose death was the result of single event on-the-job injury that left the member in a persistent vegetative state devoid of cognitive function from the date of the injury until the time of death. The benefit would be retroactive to the effective date of the member's industrial disability retirement. The provision of this bill would apply only to a member who retired and then died on or after July 3, 2006.

In addition, this bill would extend provisions of current law allowing the uninsured survivors of safety members injured in the line of duty who enter into, and remain in a persistent vegetative state until the time of death to receive retroactive PEMHCA health care benefits at the state employer contribution rate calculated at 100 percent of the weighted average of health premiums as specified under law. This benefit would be available to all survivors even if the employer was not contracted to provide PEMHCA health care benefits, or the employer contributed less than 100 percent of the member's and/or survivor's benefits.

¹ Section 22820(f) defines uninsured as. "not enrolled in an employer-sponsored health care plan in which the employer covers 100 percent of the health care premium costs."

Issues

1. Arguments in Support

According to supporters, it is important to “make sure that every peace officer can feel that his or her family would be taken care of in the event of their being seriously injured or incapacitated. This bill would ensure that if the officer were to be put in a non-responsive state, his or her spouse would receive the death benefits that they deserve.”

Organizations in Support: California Association of Highway Patrolmen, California Professional Firefighters, California Statewide Law Enforcement Association, Peace Officers Research Association of California

2. Arguments in Opposition

There is no known opposition at this time.

3. Spouses Must Make Difficult Decision

As the law currently stands, the survivor of a safety member who is placed in a persistent vegetative state that continues until death, by an injury that occurs during the performance of their duties, has two options. The member's survivor can apply on the member's behalf to receive an industrial disability retirement allowance from the date of the member's injury until the time of death, with the associated survivor benefits thereafter. The other option available to them is to receive the special death benefit from the time of death. This benefit is generally a higher amount, but does not start until the time of death. Since these two benefits are distinct and mutually exclusive, a survivor is faced with the difficult prospect of choosing one over the other. This decision comes at a time when it is merely compounding other painful circumstances, and could place an undue burden on the survivor.

4. Legislative Policy Standard

The Board's Legislative Policy Standards suggest a neutral position on proposals which do not significantly affect the benefit interests of our stakeholders and which do not significantly impact CalPERS benefits or the administration of the System. Therefore staff recommends the Board adopt a neutral position on AB 2156.

V. STRATEGIC PLAN:

This item is not a specific product of the Annual or Strategic Plans, but is a part of the regular and ongoing workload of the Office of Governmental Affairs.

VI. RESULTS/COSTS:

This bill would create a higher benefit level for survivors of members who are injured in such a way that they remain in a persistent vegetative state until the time of death.

Program Costs

The costs associated with this bill are impossible to predict with any certainty due to the high number of variables involved. Given that such deaths are infrequent and unusual, there is no way to judge how often such a situation may occur. The difference in benefit levels between the industrial disability benefit and the special death benefit will also vary in accordance with the salary and situation of the individual member. However, given the infrequency which with this situation has occurred in the past, such costs will most likely be negligible.

Administrative Costs

The work associated with making such an adjustment is limited. Given that this would be an unusual and uncommon situation, CalPERS can perform any necessary adjustments as part of its usual and ongoing workload.

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